

BOARD OF WATER SUPPLY of the COUNTY OF KAUA'I

RULES COMMITTEE MEETING

Second Floor, Microbiology Lab Bldg
Kaua'i County Department of Water
4398 Pua Loke Street, Lihue, Kaua'i, Hawai'i 96766

MONDAY, NOVEMBER 5, 2012

10:30 a.m.

or soon thereafter

AGENDA

1. ROLL CALL
2. ACCEPTANCE OF AGENDA
3. MEETING MINUTES:
May 15, 2012
4. OLD BUSINESS:
 - a. Impact Fees and FRC Proposed Rules
 - i. Part V Water System Development Fee Sections I-X
 - b. Manager's Report No. 13 – 7- Board Discussion and Possible Action on Part 2 Section IX of the Rules: Adjustment of Bills for Undetected Leaks and Unforeseen Damages
 - i. DOW Revised Proposed Changes on Part 2 Section IX of the Rules
5. ADJOURNMENT

NOTE: Special Accommodations for persons with disabilities are available upon request five (5) days prior to the meeting date. Please call the Department of Water, County of Kauai, at 245-5408 or drop by at 4398 Pua Loke Street, Lihue, Kauai. Our mailing address is PO Box 1706, Lihue, HI 96766.

Draft Minutes

The image features the text "Draft Minutes" in a bold, blue, sans-serif font. Each letter has a thin green outline. The text is slightly slanted to the right and casts a soft, grey, 3D-style shadow on the white background below it.

Rules Committee Meeting

May 15, 2012
9:30 a.m.

Committee Members Present: Michael Dahilig, *Chair*, Ray McCormick, Randall Nishimura

Absent/Excused:

Board Members Present: Clyde Nakaya, Larry Dill

Staff Present: David Craddick, Deputy County Attorney Andrea Suzuki, William Eddy, Carol Beardmore, Marites Yano, Dustin Moises, Val Reyna

Chair Dahilig, called the Rules Committee Meeting to order at 9:33 a.m., quorum was achieved.

AGENDA

Mr. Nishimura moved to accept the agenda as circulated; seconded by Chair Dahilig; motion was carried.

Re: *Manager's Report No. 11-24 – Committee Discussion and Possible Action on Part III Rule Amendments – Establishing Standards for Subdivision Water Systems as it pertains to Section Roman XII of the Rules and pertaining to modification requirement for subdivision standards.*

DISCUSSION:

Manager Craddick referred to Rule Amendments Part III, Section 3 and Part II, Section 2 regarding another portion allowing the Manager to change the standards. The standards do not come to the Board but are included in the report with this change if it is accepted. In Section 2, the Board wanted to go through all Subdivision Rules. Section 2, states “The Manager and Chief Engineer may, for good cause shown, permit departure from the standards or 2005 Amendments or both.” By adding the language requirements, it becomes modified. A few changes from the standard could be reported to the Board every year. The changes usually deal with manufacturers that supply materials which are allowed or not allowed. Manager Craddick explained this is under the Hawaii County Water System Standards.

What Manager Craddick and Chair Dahilig proposed are changes in red on page 32 (any waiver or modifications). The change should be recommended after a monthly report to the Board adding a period, striking the rest of it and adding this sentence: “If the Board chooses to deny or modify the Manager and Chief Engineer’s decision, they must do so by a two-thirds vote.”

Manager Craddick would append a list of exemptions to his monthly report at the conclusion of the meeting which would be considered approved and have concurrence with the decision. The next sentence states, “Should the Board choose to deny or modify, it must do so by a two-thirds vote.” Chair Dahilig agreed if a decision is overridden, a two-thirds vote is needed.

Rules Committee Meeting
May 15, 2012

Chair Dahilig stated on Session 2, if the Board takes action, the incentive is to have the applicant work with the department first and resolve all problems before coming to the Board. In a normal contested case proceeding, it is meant as a simple majority which should be appropriate.

Chair Dahilig stated in Paragraph 1, any waiver or modification which would be subject to the two-thirds vote for the override of a business decision. A two-thirds vote is a super majority which would be 5 of 7. Mr. Nishimura stated this may be practical to actually say 5 votes are needed. The number of members is changed in the Charter and there is no room for argument regarding quorum. Mr. Nishimura questioned what if you do not have 5 or more members.

Mr. Nishimura stated the Board has a time limit of the date of action which is the date of submission of the Manager's Report. With 4 members present, the votes would not be able to override the Manager's decision. If the Board does not agree with the Manager's decision, then it requires a two-thirds or 5 votes. The two-thirds vote is a way to bring both parties to resolving it for the Board. Deputy County Attorney Andrea Suzuki suggested using the phrase "super majority" for the voting body for the upper portion.

Chair Dahilig asked if Mr. Nishimura would like the plan to say simple majority. Mr. Nishimura opted for the higher which Chair Dahilig agreed. Mr. Nishimura explained that the Board needs to be fair and firm with whatever has been decided at the Departmental level with some overriding. Deputy County Attorney Andrea Suzuki added "or unanimous." Mr. Nishimura is in agreement with 5 of 6 votes for the whole Board. Mr. Dill agreed it would take more than a simple majority and either of these cases would be appropriate.

(Clyde Nakaya entered meeting at 9:45 a.m.)

Chair Dahilig inquired if the adoption of the Rules prescribed by the Bylaws, require a simple majority. Chair Dahilig agreed it would take more than a simple majority in either of these cases.

Mr. Nishimura moved to have the Rules Committee recommend approval of Part III, Section XII, entitled, Modification of requirements as *amended* for adoption by the full Board and recommend a Public Hearing, seconded by Chair Dahilig; by a unanimous vote, motion was carried with 3 ayes.

With no further business, Chair Dahilig adjourned the Rules Committee Meeting at 9:51 a.m.

ein

Old Business

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

November 5, 2012

Re: IMPACT FEES & FRC PROPOSED RULES

RECOMMENDATION: Consider moving forward.

BACKGROUND: The proposal before you is based on following current practices for meter sizing and credit application.

There has been much concern over what is best for the community in this matter. Our goal is to satisfactorily fund water system expansion through impact fees so that we can avoid short term borrowing.

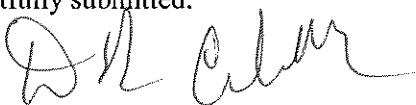
There are sections on Purpose and Authority (section I), Definitions (Section II), refund clarifications (section III), applicability (section IV), Change in size or service connection location (section V), water system development fee computation (section VI), exemption (VII), refund or reimbursement of Water System Development Fee (section VIII), FRC paid prior to enactment of part V rules (section IX), credit (section X), penalties (section XI) and records, accounts contest severability and rules changes (section XII).

State law says "assessment of impact fees shall be a condition precedent to the issuance of a grading or building permit and shall be collected in full before or upon issuance of the permit." We are trying to get this clarified. This will not happen before July of next year. Therefore the proposal is before you is to continue with existing rules essentially. There are issues with this but it allows us to proceed.

Should the committee go ahead with this proposal it should be with the understanding that we meet on a much more accelerated basis to get to a rational industry standard basis which is to use the AWWA Sizing Water Service and Meter Manual M-22 for determining meter size and assessing a development fee that should meet all objectives. We also need to address the issue regarding the current situation where any developer could take all available water.

Finally, I also request your action here today be transmitted to the Finance Committee before going to the full Board so there is a full understanding of the rule changes so the relevant proposal from the consultant is used by the Finance Committee and its work may also be completed.

Respectfully submitted:



David Craddick, P.E. C.E.M.,
Manager and Chief Engineer

Attachment: Part V Water System Development Fee draft (11-2-12)

Mgrs Report/Rules/November/Impact Fees & FRC Proposed Rules:mjg (11-5-12)

PART V
WATER SYSTEM DEVELOPMENT FEE
within the County of Kauai
and Providing Penalties for the Violations Thereof

Section I: General Provisions

A. Purpose and Authority

The following rules shall govern the assessment of impact fees for Board of Water Supply (Board) capital water facilities expansion for source, storage and transmission pipeline capacity. Expansion of capital water facilities is needed in order to accommodate increased demand on the capacity of these facilities due to new development and/or additional demand of existing users. These rules are authorized pursuant to Hawaii Revised Statutes (H.R.S.) §46-142 and other applicable State law. New development and/or additional demand shall be assessed impact fees in proportion to its demand on capital water facilities and the impact fees assessed shall be expended for public capital water facilities projects. Prior to this amendment the term Facilities Reserve Charge was used by the Board in its rules and regulations [Eff.: Am] (Auth: HRS 54-33; HRS 46-142) (Imp: HRS 54-33).

B. Findings

In the review of the impact of growth relative to the existing and planned capital water system facilities capacity available to the water system, the Board hereby finds that the recent and anticipated growth rates and corresponding water demands would place burdens on the existing water system. The Board further finds that such growth and increased demand would necessitate an excessive expenditure of public funds in order to create adequate facilities and to promote and protect the public health, safety, and welfare. The Board also finds that it is fair and reasonable to require new development and/or additional demand to pay its proportional share of the capital costs necessary to accommodate such development. Finally, the Board finds that establishing benefit zones as identified in Hawaii Revised Statutes (H.R.S.) §46 is not necessary as a reasonable benefit can be otherwise derived.

Section II: Definitions

"Additional Dwelling Unit (ADU)" is as defined in Kaua'i County Code Section 8-26.1 and means living quarters attached to a main dwelling or within an accessory building located on the same lot as the main dwelling for use as a separate dwelling.

"Additional water service" means a provision for additional water source, storage or transmission resource through the installation of an additional water meter and/or the installation of a consolidated metering system, and/or the replacement of an existing water meter with a larger-capacity water meter above what is allowable for the size of meter currently approved for the premise for which the meter serves.

"Allocation" means quantity and size of meter(s) identified as those required to serve the water needs of a premise for the purpose of reserving a quantity of water to meet the anticipated source, storage and transmission demand of that service.

"Applicant" means any person, individual, corporation, partnership, business, organization, association, or other entity whatsoever that applies for water service from the Department.

"Application" means a request on the Water Service Inquiry form, request for county building permit, request for subdivision approval, filing of condominium property regime or other potential water using demand approval whether requested on the DOW Water Service Inquiry form or not which are determined by the Manager to require additional water service from the water system.

"Board" means the Board of Water Supply of the County of Kaua'i.

"Building permit" means the official document or certificate issued by the County authorizing the construction of any structure.

"Condominium" means the ownership of single units, with common elements, located on property within the condominium property regime as allowed in Hawaii Revised Statutes 514A.

"Consumer" has the meaning prescribed to it under Part II section 1 of the Department of Water Rules and Regulations.

"Consolidated meter system" means water that is furnished to multiple dwellings through a centralized or single meter or have combined fire flow and potable consumption from the same meter that were previously approved.

"County" means the County of Kaua'i, a political subdivision of the State of Hawaii.

"Credit" means the amount of money or gallons that an Applicant or the Applicant's predecessor in interest has spent or developed for dedicated water system improvements to increase source, storage tanks, transmission pipelines or a combination of any of the foregoing and conveyed to the Board which are used to reduce the WSDF.

"Dedicated water system improvements" means water system improvements that are privately designed and constructed and then accepted by the Board for operation.

"Distribution system" means the water pipelines used to bring water from the transmission system or storage tank to individual service laterals and hydrants. Transmission systems that currently provide water to individual service laterals and hydrants shall not be construed to be a distribution system simply because they have services or hydrants installed on the line.

"Developer" means any person(s) causing an increase in demand on the water system.

"Department of Water" (DOW) means the County of Kaua'i Department of Water.

"Facilities Reserve Charge" shall mean the name of the fee in effect prior to enactment of this rule to be paid by subdividers or, when applicable, new consumers as their proportionate share in improvements to the Water System.

"Impact fee" means the charges imposed on a developer by a county to fund all or a portion of the public facility capital improvement costs required by the development from which it is collected or to recoup the cost of existing public facility capital improvements made in anticipation of the needs of a development.

"Manager" means the Manager and Chief Engineer, Department of Water of the County of Kaua'i.

"Person" means an individual, firm, partnership, company, corporation, association, syndicate, governmental agency, or any legal entity, including but not limited to a trustee, receiver, assignee, or similar representative thereof.

"Premise" means a parcel of real property and any structures thereon which have water service will require water service or requires additional water service and includes subdivisions or Horizontal Property Regimes of a parcel of real property.

"Private Water System" means developments that utilize its own source water, storage and transmission pipelines constructed according to state of Hawaii Water System Standards 2002, or its amendments, and do not depend on the Department for backup and are allowed by agreement with the Water Department.

“Recoupment” means the proportionate share of the public facility capital improvement costs of excess capacity in existing capital facilities where excess capacity has been provided in anticipation of the needs of a development.

“Schedule” means the Water System Development Fees as approved by the Board set out in Part IV section VII of these rules and regulations.

"Service lateral" means the connection to a distribution pipeline, pipes, fittings, valves, and other appurtenances up to and including the consumer shut-off valve and water-meter box, but not including the water meter.

"Source " means the construction of any structure to capture, convey, store, and treat currently unutilized non-potable surface waters; the construction of facilities for currently unutilized ground water and its treatment, including pumps, motor control stations, pump control or disinfection contact time tanks or portions of transmission line needed to meet disinfection contact time, the construction of desalination facilities; which provides or recaptures state Department of Health and DOW acceptable water and any fee simple land required for the improvements.

"Storage tank" means an enclosed reservoir to store water for peak-hour flow, and any fee simple land required for the improvements.

"Structure" shall have the same meaning as defined in the Uniform Building Code as adopted, amended, or replaced by the county.

“Subdivider” has the meaning ascribed to it under section I of Part III of the Department’s Rules and Regulations.

“Subdivision” has the meaning ascribed to it under section I of Part III of the Department’s Rules and Regulations.

“Subdivision water system” shall mean the water system, within and adjacent to any subdivision, including distribution lines, valves, hydrants, laterals, and all appurtenances necessary to distribute water and provide for hydrant service for such subdivision in accordance with 2002 State of Hawaii Water Standards as amended.

"Temporary meter" means any meter connected to a hydrant or a service lateral used less than one year by agreement of the DOW.

"Transmission pipeline" means a pipeline that delivers potable water from a source development to a storage tank or distribution system, including any booster pump stations and appurtenances attached to the pipeline system to increase water movement capacity, and any easements or land required for the improvements. This does not include any hydrants or services that should not be attached to such line but for convenience may be where it is shown that the line cannot operate at pressures less than 40 pounds per square inch. Transmission pipelines that currently provide water to

individual service laterals and hydrants shall not be construed to be a distribution system simply because they have services or hydrants installed on the line.

“Unauthorized service recipients” means previous owners or their successors in interest that have added facilities requiring water that meet the applicability requirements of section IV in this rule and have not followed the provisions outlined in this chapter.

“Unit(s)” means places where water is used but are not be directly metered by DOW. i.e.: residential, hotels, condominiums, shopping areas with multiple water use areas or other like areas.

"Water meter" means a device that measures the volume of water delivered to any premise. In the case of detector check assemblies or detector backflow assemblies the meter only reads a fraction of the flow.

"Water Service Request" means the form filled out inquiring into available water system service and requesting an allocation of source, storage and transmission capacity.

“Water system” means the system operated by the Board and owned by the customers.

“Water Service Application” is the form filled out to request that a meter be placed in service.

"Water System Development Fee (WSDF)" Is a charge designed to recover a portion of the investment required for water system facilities growth that is assessed by the Board of Water Supply on a developer, new customer, or existing customer who increases their demand for water service. The payment of the Water System Development Fee charge runs with the land not with the payor.

"Water System Improvement" means any project which will provide additional source capacity, additional storage tank capacity or additional transmission pipeline capacity for any of the water systems.

Section III: WSDF Fee Schedule

A. The WSDF imposed shall be as set forth in the WSDF Schedule, in Part IV of the Department Rules. The WSDF Schedule was created in accordance with a report prepared by an independent consultant as adopted by the Board for the purposes of WSDF assessment. The report calculated the costs associated with water development needs as laid out in the Department of Water facilities needs assessment study entitled “Water Plan 2020” as amended.

Section IV: Applicability

- A. On and after the effective date of this Part V Rule, unless exempted pursuant to Section VI, all new developments requiring water supplies from the Department of Water or those requesting additional water supplies from existing water services will be subject to this Chapter of the rules.
 - 1. The above includes but is not limited to, the following:
 - a. Irrigation services.
 - b. Additional structures, ADUs or additions to structures that are or will be connected to existing meters where additional capacity is required.
 - c. Requests for additional meters with no changes to the premise.
 - d. Additional use on combined fire flow and potable flow meters.
 - e. Storage and transmission resources that are used to deliver required fire flow are subject to the WSDF.
 - f. All reconnection of services that have had services ordered-off (meters removed) for more than one year.

Section V: Change in Size of Service Connection or Location.

- A. In the event the Department or consumer determines that an increase in the size of service connection is required due to increased water usage and/or flow rates above and beyond meter design flow rates, the consumer will be required to pay for the cost of the proper sized service connection plus the applicable difference in WSDF minus the WSDF initially previously paid for the smaller connection.
- B. When the Department determines an increase in meter size is required, the Department will issue a notice, in writing.
 - 1. If an application for the larger size service connection is not made within 30 days after notification in writing from the Department, the consumer's service, may be discontinued.

Section VI: Water System Development Fee Computation

A. General Provisions

- 1. Water System Development Fees will be assessed based on meter size.
- 2. The minimum fee charged for services with no existing meter shall be the WSDF applicable for a 5/8" meter.
- 3. The applicable WSDF will be the WSDF that is in force and effect at the time a Water Service Application is submitted and approved.
 - a. Upon approval by DOW of an Applicants Water Service Request, an Applicant shall have two (2) years to submit and obtain approval of the Water Service Application form.

- i. An Applicant may be granted two (2) six-month extensions if the Applicant shows good cause to the satisfaction and approval of the Manager
 - b. If an Applicant fails to obtain Water Service Application approval within the time frame laid out in this paragraph, the WSDF shall be returned to the owner of the premise the WSDF was paid for. Any allocation of water made for that premise shall lapse unless otherwise agreed upon by the Manager.
 - c. Should the WSDF increase or decrease during the period between when the initial water request is approved and when the water service application is approved, the difference in WSDF costs must be paid by the applicant or reimbursed by DOW before DOW installs the meter.
 - i. If any reimbursement is due from DOW the meter installation will not be delayed for reimbursement.
 4. The Department shall assess a non-refundable administrative charge as set forth in Part IV of the Rules and Regulations..
- B. No Available Water: If the Department DOES NOT have a sufficient water system developed for domestic use, and/or a sufficient water system for fire protection as required by the Department, then, the Applicant shall pay the WSDF in force and effect at the time of requesting water service. .

Section VII: Exemptions from WSDF payment.

- A. Any Applicant for a building permit for any structure shall be exempted from paying the WSDF, upon proof presented, that the structure or the premises on which the structure is located does not require water service from the water system or that the WSDF or facilities reserve charge has already been paid and the meter is correctly sized and was installed.
- B. Any Applicant for subdivision shall be exempt from paying the WSDF, if the Applicant and the Board enter into a Private Water System for Subdivision Agreement.
- C. Any application for water service within three hundred sixty five (365) days after removal of a water meter due to delinquency, pursuant to the Rules of the Board, shall be exempt from the WSDF after payment of the amount that caused the delinquency. The applicant may be required to reinstall the lateral if the previous lateral no longer exists, is unavailable, must be replaced or size change is required.
 - 1) The lateral must be installed before the 365 day grace period lapses.
 - 2) After this time the WSDF will have to be repaid to resume service.

- D. Lots created by a subdivision which the subdivider warrants and the Manager accepts will not be served by the water system are exempt from the WSDF. In the event that the Manager determines that the subdivision was not to be serviced by the water system, but later water service is requested, full compliance with these Part V rules is required. A statement to this effect shall be clearly written on the subdivision map and written in the conveyance documents.
- E. Within 365 days prior to receiving subdivision preliminary approval from the Planning Department, a premise which is serviced by an existing meter or which was serviced by a meter removed at the request of the service holder, with payments current at the time of service discontinuance, is exempt from this rule for one of the lots created.
- 1) The subdivider must make known which premise is to be served and if it is a premise which does not have a service lateral adjacent to it a new lateral will be needed before installation of the meter.
- F. In the event the WSDF has been paid for a subdivision and subsequently the subdivision is reconsolidated reducing the number of buildable lots, the WSDF will be returned in the amount paid, provided the reconsolidation is completed within 365 days following the prior subdivision approval.
- 1) If not reconsolidated within 365 days the WSDF will not be returned.
 - 2) This shall not apply to a premise which has received approval for a building permit on the premise to be reconsolidated.
- G. Detector check meters or other fire line services to be used for fire purposes are exempt from the source portion of this rule. For consolidated meter systems this source exemption shall only be applied to the portion of meter needed for the fire flow. For example a 2 inch service that requires a six inch meter for fire flow would pay the full WSDF for the 2 inch meter and pay the storage and transmission portion for the upsize to six inches.
- H. When the proper size of service connection for any premises has been determined and the installation has been made, the Department has fulfilled its obligations insofar as the size of the service and the location thereof are concerned. If thereafter the consumer can show an acceptable reason for a change in size of the service connection or a change in the location thereof, they shall bear all costs of such change; provided, however, that in the case of a consolidation of existing meters to one of larger size or, conversely, in the case of changing from a larger meter with usage allowed that equals or is less than the flow for two or more smaller meters, the consumer shall be given credit not to exceed the WSDF at the current rate of the existing meter(s) even though a lower WSDF may have been paid when the larger meter was installed.

- I. Temporary meters are exempt from the WSDF provided they are used one year or less.

Section VIII: Refund or Reimbursement of WSDF

- A. An Applicant that is granted a reduction in the size of water meter shall not be entitled to any reimbursement.
- B. Refund of the WSDF shall not be made with the termination of water service. The WSDF paid shall be credited to future applications for service at those premises.
- C. If the WSDF is not expended or encumbered within six years, as stated above, a refund shall go to the Applicant or the Applicant's successor in title in the amount paid with any accrued interest.
 - 1) A WSDF refund request shall be submitted to the Department within one (1) year of the date on which the right to claim arises.
 - 2) Any unclaimed refund shall be retained in special trust fund or interest bearing account and shall be expended according to this Part V Rule.
- D. If the WSDF is ever terminated, all unexpended or unencumbered funds shall be refunded as provided in Section VI(C).
 - 1) The Board shall give public notice of termination and availability of refunds at least two (2) times in a general circulation newspaper with daily distribution.
 - 2) All funds available for refund shall be retained for a period of one year at the end of which any remaining funds may be account to the Board's general fund and expended for any public purpose involving water supply or service as determined by the Board.
- E. Recoupment shall be exempt from this section.

Section IX: Facilities Reserve Charge Paid Prior to Enactment of Part V Rules

- A. This Section applies to those Applicants that have paid what was known as a "Facilities Reserve Charge" prior to enactment of these Part V Rules and have failed to install a water meter on the subject property for which the Facilities Reserve Charge was paid, hereinafter referred to as "Prior Applicants".
- B. The Department will hold the allocation of water for Prior Applicants for 6 months from the date of enactment of these Part V Rules.
 - a. After expiration of the one half (1/2) year from the date of enactment of these Part V Rules, a refund shall be given in accordance with the procedures in Section 6(C) above.
- C. Prior Applicants have one half (1/2) year from the date of enactment of these Part V Rules, to install a water meter, hereinafter referred to as the "Grace Period", at no additional cost.
- D. After expiration of the Grace Period, Prior Applicants must pay the difference of the original Facilities Reserve Charge paid and the WSDF in effect at the time the meter is installed to maintain an allocation of water service.

Section X: Credit

[no change from previous rules]

Section XI: Penalties

A. Cease and Desist

Should the Manager discover a user or non-user has an unauthorized connection to the water system it shall be considered a violation. The Manager shall give reasonable notice and request the violator correct or cease and desist the violation via written notice transmitted via certified mail or posted on the property.

B. Civil Fines

After reasonable notice and attempts by the Manager to have the user or non-user correct or cease and desist the stated violation, the Manager may levy a fine of up to \$1,000 per violation and/or \$1,000 per day the violation persists upon the user or non-user. The fine notice shall be served via certified mail or posted on the property. The fine shall not be collected until after an opportunity for a hearing before the Board pursuant to Chapter 91, Hawai'i Revised Statutes. Any appeal shall be filed within thirty days from the date of the final written decision by the Manager.

Section XII: Records, Accounts Contest Severability and rule changes

A. COLLECTION AND EXPENDITURE of WSDF

- a. Upon collection of WSDF, WSDFs shall be deposited in a special trust fund or interest-bearing account. The portion that constitutes recoupment may be transferred to any appropriate fund.
- b. For dedicated water system improvements, the Department shall, upon acceptance and by agreement, establish and record a value for the water improvements conveyed and any credit activity.

B. Contesting the WSDF

- a. Any person impacted by these rules pertaining to WSDF may contest the amount of the fees assessed by following the requirements of Part I of these rules and regulations.

C. Severability

- a. If any of these regulations or the application thereof to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of these regulations which can give effect without the invalid provision or application, and to that end the provisions of these regulations are severable.

- D. The Board, by a two-thirds vote of the entire voting membership, may waive or modify requirements of this rule when not contrary to the purpose of this rule or the public interest, and when the Board finds that:

- a. Strict application of this rule would cause an absurd, unfair, or unreasonably harsh result; and
- b. The Applicant's circumstance or condition is unique or exceptional, and the Board would grant the same request if made by every similarly situated Applicant; and
- c. In cases of exemption from the fee or reduction of the fee, the resulting financial impact upon the Department and future consumers is acceptable to the Board.

DRAFT RULE

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

MANAGER'S REPORT NO. 13-7

September 20, 2012

Re: Board Discussion and Possible Action on Part 2 Section IX of the Rules

RECOMMENDATION: It is recommended that the Board take no action in eliminating Part 2 Section IX of the Rules at this time and instead, look at a revised proposal.

BACKGROUND: The leak elimination proposal was expected to be implemented with the rate changes as the changes eliminate lost revenue. It was expected that \$0.4 to \$0.5 million in annual leak rebate revenue would not be lost. It was also expected that this proposal be implemented the same time as the monthly billing, which has been delayed.

Testimony was provided on the rule change proposal. Primarily it was directed toward reducing costs in other areas within the Department where funds were thought to be lost. These include overtime and unaccounted for water.

The concern over unaccounted for water is something the staff is working diligently on. Overtime is now primarily a result of construction connections that are done after hours to limit inconvenience from service disruption, SCADA system call outs, and accounting process changes being implemented. Construction related overtime is capitalized with the construction project and would not reduce operating costs by eliminating that activity. Elimination of night overtime may however disrupt customer water use during the day if connections were done during the day. I do not want to infer that connection overtime cannot be looked at as there is other activity related to the connections that are not capitalized, that is not providing any benefit to the system, and is also a drain on revenues.

Another testimony is from a repairman who benefits from our leak rebate. In the event a customer has a water line break in their property, the Department does not find nor fix leaks after the meter. Customers with leaks typically get plumbers of their choice to find and fix their underground leaks. In order for a leak adjustment request to be submitted to the Department, their underground leak must be substantiated with an invoice from their plumber indicating when the leak was fixed and the cost paid by the customer.

Our guess is that this activity would still go on whether the leak rebate was cancelled or not. There may be some concern customers may try to fix the leaks themselves if an invoice were not required by the department.

The issues raised do not address the issue that customers with non-leaking service lines are subsidizing leaks that are no cause of their own.

Attached is a revised proposal. Should the Board not want to proceed with the proposed elimination of the leak rebate and review this proposal next month action at this time could be deferred until a later date.

Our implementation in the upcoming CC&B project and has been pushed back to a later date. HBWS is not accepting any process changes until the new billing system goes live. After department changes are approved by the Board, it will still take some time to adjust the billing system to accept the changes.

Thank you for your attention to this matter.

Respectfully submitted,

David R. Craddick, P.E., C.E.M.
Manager and Chief Engineer

Attached: DOW Revised Proposed Changes on Part 2 Section IX of the Rules

MgrpSeptember2012/13-7 Board Discussion & Possible Action on Part2 Section IX of the Rules(09-20-12):mjb

Administrative rule material to be repealed is bracketed. New material is underscored. Deleted material is ~~stricken through~~ or [bracketed.] In printing this rule amendment, the brackets, bracketed material, underscoring, strikes need not be included.

SECTION IX - ADJUSTMENT OF BILLS FOR UNDETECTED LEAKS AND UNFORESEEN DAMAGES

1. The Department will reduce high water bills caused by undetected leaks in the consumer's supply pipe, by one half of the excess over the consumer's normal bill based on the previous six months' average. Adjustments will also ~~Reduction in water bill shall be~~ allowed where the high water bill was caused by some unforeseen circumstance such as underground leaks, storm damage, flood, explosion, fire and ~~or~~ others.
2. Before adjustment is made under this section, the owner shall first request an adjustment and submit substantiating data to warrant such an adjustment if required by the Department. The Department shall make their determination based on the data presented and any other evidence as collected by the Department, if necessary.
- ~~2.~~ 3. Adjustment will be allowed only if the consumer exercises diligence in ~~repairing~~ stopping the leak within the period of one week after ~~knowledge they knew or should have known of an underground leak age.~~ Knowledge of the leak can come from a water bill, personal notification from the Department by attaching a notice to the door of the residence, phone or email message from the Department, neighbor notification or other means. For storms, explosions or fires the leak must be stopped within 24 hours unless the service holder has died in the incident then one week will be allowed.
- ~~3.~~ 4. No adjustments will be made for leakage due to faulty plumbing fixtures and exposed waterlines within ~~his property~~ the premise.
- ~~4.~~ 5. ~~Before adjustment is made under this section, the owner shall first request an adjustment and submit substantiating data to warrant such an adjustment if required by the Department. The Department shall make the determination based on the data presented and any other evidence as collected by the Department, if necessary.~~ The reduction in high water bill from leaks as noted above will be by charging the first block rate for the Departments best estimate of the excess over the consumer's normal bill based on the years monthly average.
6. In cases where the consumer has had the service for less than one year the Managers shall decide on the amount of the reduction.
7. Should the consumer decide they want to contest the Managers decision they must pay fifty percent of the reduced bill before the matter is put on the Boards agenda.
8. Reduction in water bills for underground leaks is allowed only once in ten years for the premise the leak is found on.
9. Payment of the leak amount may be made by monthly payment spread over one year but in no case shall it be less than twenty five percent of the average monthly bill per month of payment.
10. Consumers that have agricultural water rates would have an increase in the water bill if charged at the first block and may not want to utilize this rule.